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THE TAXATION OF PEDDLERS UNDER THE INTERSTATE COMMERCE CLAUSE.

The limitations imposed upon the taxing power of the states by Article I, Section 8, of the Constitution of the United States, are always subjects of interest to the student of constitutional law. The Federal courts, since the decision in the great case of *Gibbons v. Ogden*, 9 Wheat. 1, have consistently held that the power of Congress over interstate commerce was exclusive, and in a number of notable decisions have defined broadly the powers of the states in connection therewith. In *Brown v. Maryland*, 12 Wheat. 419, the Supreme Court enunciated the original-package doctrine—that goods shipped into a state could not be taxed as an import while remaining in the original package, but could only be taxed after becoming mixed with the mass of property in the state. The distinction between the exercise of the police power of the states and the imposition of taxes for revenue was pointed out most effectively in *Minnesota v. Barber*, 136 U. S. 313, for while a state might impose a valid tax where such tax was in the reasonable exercise of the police power (as for instance, the right to charge an inspection fee at ports, or for the inspection of food stuffs), or might prohibit wholly by virtue of that power the importation of goods detrimental to the health and welfare of its citizens, it could not exercise this power as a shield to exclude from its markets the proper subjects of import from other states. *Robbins v. Shelby Taxing District*, 120 U. S. 439, held that a license tax could not be levied upon a drummer selling goods by sample in another state, even though there was no discrimination in favor of citizens of the state. Where Congress has imposed no restric-

tion upon commerce it is the intention of the Federal Government that it should remain free and unfettered. *State Freight Tax Cases*, 15 Wall. 232, 279. All of these decisions proceed upon the theory that the power to tax is the power to destroy, and that for this reason no power can be conceded to the states, else the very object for which the exclusive power was granted to the Federal Government would be destroyed.

But between these great cases and the multitude of decisions under them there is left a broad margin of debatable ground wherein the rights of the states are not as yet clearly defined. While the case of *Robbins v. Shelby Taxing District* exempted from taxation one who goes into the state merely for the purpose of taking orders, which afterward are shipped direct to the purchaser by the principal in another state, a different question arises when the goods are afterward shipped to the agent and by him distributed to the purchaser. Are the goods and the occupation of the person distributing them the subject of taxation? This question has not as yet, we believe, been squarely before the Supreme Court, and the decisions of the state courts are by no means uniform.

The latest of these is the decision in the case of *Wrought Iron Range Co. v. Campen*, 47 S. E. 658, in the Supreme Court of North Carolina. In that state the Revenue Act of 1903 levied a license tax upon peddlers doing business in the state. The defendant sold its goods by means of a sample range carried by its agents, the orders being filled by the shipment into the state of the ranges in separate crates consigned to the warehouse of the defendant, and from there distributed by another agent to the purchaser. A second clause of the revenue act defined the term "peddler" to include "any person carrying a wagon, cart or buggy, or travelling on foot for the purpose of exhibiting or delivering any wares or merchandise." The decision cited held this act to be in conflict with the Constitution of the United States, and to be void and of no effect, thus reversing a line of decisions upholding legislation practically similar.

The first of these cases arose in 1896, under a similar statute imposing a license tax upon agents, in the case of *Range Co. v. Carver*, 118 N. C. 335. The statute was there upheld upon the theory that the defendant, being a foreign corporation, could only do business in the state by comity, and that it could not claim greater privileges than the state gave to its own citizens. The principle was again called in question in 1900 in the case of *State v. Caldwell*, 127 N. C. 521, where the defendant took orders for pictures which were shipped to him knocked down, and then put together by him and delivered to the customer. This the court held not to be a delivery in the original package within *Brown v. Maryland*, or within *Emert v. Missouri*, 156 U. S. 296. In *Collier v. Burgin*, 130 N. C. 632, the subject was again considered and the former decisions affirmed. In that case the agent took orders for books by sample, and afterward delivered the books in unbroken sets, as they were shipped to him.

The ground of decision was, however, slightly different. "The books," said the court, "are shipped in New York by the plaintiff to the plaintiff in North Carolina. There is no commerce about it. When the plaintiff gets his goods here, if he wishes to peddle them he must do like other people who have goods and wish to peddle them. He must submit to the laws of the state and obtain a license."

The present case repudiates all these grounds of validity as contradictory to the doctrines of the Supreme Court, and in a lengthy opinion the court reviews the entire law upon the subject. The decision is based upon the fact that the goods are shipped into the state in unbroken packages, and in this form delivered to the purchaser. The court says: "When we once concede, as we must, that the power of Congress to regulate commerce among the several states does not stop at the boundary of a state, but must enter its interior and operate there, and that, being 'coextensive with the subject on which it acts' its full force is not spent until there is a sale of the article which is imported, and not then if there is any discriminaton against the goods because of their foreign character, the conclusion we have reached seems to be inevitable. . . . The mere calling the plaintiff a peddler does not make it a peddler, for the purpose of laying a tax upon its business as an importer which interferes with interstate commerce, and is in its essence a regulation of the same."

In the neighboring state of Georgia a similar statute came to the attention of its supreme court in *Wrought Iron Range Co. v. Johnson*, 84 Ga. 754, and the court held that the agent who solicited such orders only, and who did not afterwards deliver them, could not be made subject to such a tax on peddlers. But in a later decision, *Racine Iron Co. v. McCommons*, 111 Ga. 538, this case is limited to that state of facts alone, and held not to include the receiving or distributing agent who afterward receives them, nor the goods themselves when so received. The decision assumes that there is no reason why such goods should not be deemed part of the mass of the property in the state as soon as they are received by the agent, regardless of the fact that there is some purchaser willing to take them from him in the performance of a purely executory contract. Cases which coincide with this view of the Georgia court are *Newcastle v. Cutler*, 15 Pa. Super. Ct. 612, and *In re Wilson*, 19 D. C. 341.

RAILROADS: LIABILITY OF LESSOR FOR INJURIES TO LESSEE'S SERVANT ARISING THROUGH NEGLIGENCE OF LESSEE.

The Supreme Court of Illinois, in a recent decision (*Ry. Co. v. Hart*, 70 N. E. 654), announced a general rule making a lessor railroad company liable to an employee of a lessee railroad company for a tort arising solely through the lessee's negligence. It is difficult to see how such a conclusion could have